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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

Civil Action No. 06-CV-617-AS

v.

Cook Development Corp.,
Birch Creek Construction, Inc.

CONSENT DECREE

Defendants.

I. BACKGROUND

A. Plaintiff, the United States of America, on behalf of the Administrator of the U.S. Environmental Protection Agency ("EPA") filed a complaint alleging that Defendants

Cook Development Corporation and Birch Creek Construction, Inc. ("Defendants") violated the Clean Air Act, 42 U.S.C. §§ 7401-7641, and certain provisions of the National Emission Standards for Hazardous Air Pollutants for asbestos codified at 40 C.F.R. Part 61, Subpart M in the course of Defendants' renovation of the Commodore Apartment building in The Dalles, Oregon in 2001 and 2002; and

B. The United States and Birch Creek Construction, Inc. agree that settlement of the action against Birch Creek Construction, Inc. without further litigation will serve the public interest and that entry of this Consent Decree is the most appropriate means of resolving the action against Birch Creek Construction, Inc.;

NOW, THEREFORE, without any adjudication of fact, and upon consent of the parties, it is hereby ADJUDGED, ORDERED, AND DECREED as follows.

II. GENERAL PROVISIONS

1. Jurisdiction: This Court has jurisdiction over the subject matter of and parties to this action pursuant to 42 U.S.C. § 7413(b) and 28 U.S.C. §§ 1331, 1345, and 1355. Venue is proper in this District under 42 U.S.C. § 7413(b), and 28 U.S.C. § 1391(b) and (c). The complaint states a claim upon which relief may be granted. Birch Creek Construction, Inc. waives any and all objections it may have to the jurisdiction of this Court and, for purposes of this Consent Decree, agrees to submit to the Court's jurisdiction.

2. Definitions: Except as otherwise set forth in this Consent Decree, the terms used in this Consent Decree that are defined in 42 U.S.C. §§ 7412(a) and 7602, and in 40 C.F.R. §§ 61.02 and 61.141, shall have the meanings contained therein. The following terms shall have the meaning set forth below:

a. "Asbestos NESHAP" shall mean the work practices and other requirements set forth at 40 C.F.R. Part 61, Subpart M.

b. "RACM" shall mean regulated asbestos-containing material as defined in the asbestos NESHAP.

c. "Threshold Amount" shall mean (1) at least eighty linear meters (260 linear feet) of RACM on pipes; or (2) at least fifteen square meters (160 square feet) of RACM on other facility components; or (3) at least one cubic meter (35 cubic feet) of RACM off facility components where length or area could not be measured previously.

d. "Settling Defendant" shall mean Birch Creek Construction, Inc.

3. Signatories: Each undersigned representative of Settling Defendant to this Consent Decree certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Decree and to execute and legally bind that party to the Consent Decree.

4. Parties Bound: The provisions of this Consent Decree shall apply to and be binding upon Plaintiff and Settling Defendant, in accordance with Federal Rule of Civil Procedure 65(d). This Consent Decree shall not limit or affect the rights of the United States or Settling Defendant as against any third party.

5. Covered Operations: The provisions of this Consent Decree shall apply to all demolition and/or renovation operations subject to the Asbestos NESHAP where Settling Defendant is an owner or operator. Settling Defendant shall require that any renovation or demolition contractor it retains in connection with such renovation or demolition operation complies with the terms of this Consent Decree.

6. Scope of Consent Decree: This Consent Decree resolves only the Settling Defendant's liability for its failure to comply with 40 C.F.R. §§ 61.145 and 61.150, as set forth in the Complaint filed in this action.

7. Reservation of Rights: Except as set forth in paragraph 6, the United States reserves any and all legal and equitable rights and remedies available to it to enforce the provisions of this Consent Decree, and the Clean Air Act, 42 U.S.C. §§ 7401-7671(q), and its implementing regulations or of any other federal, state, or local laws or regulations. Nothing herein shall be construed to limit the authority of the United States to undertake any action against any person, including Settling Defendant, pursuant to 42 U.S.C. § 7603, in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment. Nor shall anything in this Consent Decree be construed to limit in any way the authority of the United States to cite any violation by Settling Defendant of the Clean Air Act, 42 U.S.C. §§ 7401-7671q and its implementing regulations, including the violations at issue in this action, in any proceedings pursuant to 42 U.S.C. §§ 7420 and 7606. Nothing herein shall be construed to be a release of Settling Defendant by the United States for any criminal violation. Nothing herein shall be construed to be a release of Settling Defendant by the United States for any civil claims not specifically alleged in the Complaint.

8. Duration of Decree: Settling Defendant's obligations under this Consent Decree shall commence upon entry of this Consent Decree. Unless extended by the Court, this Consent Decree shall terminate two years after the date of final entry of the Consent Decree by the Court, or whenever all penalties due and owing under this Consent Decree, including stipulated penalties, have been paid, whichever is later.

9. Retention of Jurisdiction: The Court shall retain jurisdiction to modify and enforce the provisions of this Consent Decree, to resolve disputes arising hereunder, and to entertain any application and issue any order as may be necessary or appropriate for the construction and effectuation of this Consent Decree.

10. Modification of Decree: Any modification of this Consent Decree shall be in writing and approved by the Court.

11. Effect of Consent Decree: This Consent Decree is neither a permit nor a modification of any existing permit and in no way relieves Settling Defendant of its obligation to comply with all applicable federal, state, or local laws or regulations.

12. Costs: Each party shall bear its own costs and attorneys fees incurred prior to entry of the Consent Decree in this action. Should Settling Defendant subsequently be determined to have violated the terms and conditions of this Consent Decree, then Settling Defendant shall be liable to the United States for all costs and attorneys fees incurred by the United States in any action against Settling Defendant for noncompliance with this Consent Decree.

III. INJUNCTIVE RELIEF

13. Settling Defendant certifies that it is no longer operating and that its corporate charter has been administratively dissolved by the state of Oregon. Settling Defendant further certifies that it is no longer conducting business in the state of Oregon or any other state, under its current name and structure, or under any other name or structure.

14. Settling Defendant is enjoined from engaging in any asbestos demolition or renovation activity in the future, no matter how much asbestos material is involved in the activity. Engaging in such activity, whether intentional or not, shall constitute a violation of this Consent Decree and shall subject Settling Defendant to the stipulated penalty provisions in Section V of this Decree.

IV. CIVIL PENALTIES

15. Amount of Penalty: Settling Defendant shall pay a total civil penalty of seven thousand five hundred dollars (\$7,500).

16. The United States' willingness to settle this case for \$7,500 is based on the financial information Settling Defendant has provided to the United States. The signatory for

Settling Defendant declares that the financial information provided to the United States accurately reflects Settling Defendant's current financial condition.

17. Settling Defendant consents to pay the civil penalty cited in paragraph 15, above, in accordance with the following payment schedule. Settling Defendant shall pay the civil penalty in three payments over a one-year period of time. The first payment of \$2,500 is due within 30 days of the effective date of this Consent Decree. The remaining payment of \$5,000 plus interest of \$160.72 shall be paid in two installments, with one installment payment of \$2,624.52 due within six months of the effective date of this Consent Decree and the last installment payment of \$2,536.20 due within one year of the effective date of this Consent Decree. Should Settling Defendant fail to pay each penalty installment payment in full by its due date, the entire unpaid balance of the penalty shall become immediately due and owing.

18. Payee: Each payment shall be made by wire transfer, cash, or cashiers check to the U.S. Department of Justice. Each payment shall be made in accordance with the instructions provided to the Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the District of Oregon following lodging of the Consent Decree. Notification of all such payments shall be sent to:

Chief, Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D. C. 20044
Ref: U.S. v. Cook Development Corp., CV 06-617-AS

Deborah E. Hilsman
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

The notification should reference the case name and civil action number.

19. Judgment Creditor: The United States shall be deemed a judgment creditor for purposes of collection of the foregoing civil penalties.

20. Non-Tax Deductibility: Any penalty payments made under this Consent Decree are not tax deductible.

V. STIPULATED PENALTIES

21. Failure to Pay Civil Penalty on Time: In addition to any other legal remedies available to the United States, for each day that payment of the civil penalty required by Section IV of this Consent Decree is late, Settling Defendant shall pay accrued interest in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. If the penalty payment is more than ninety days late, Settling Defendant shall pay interest in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961 and, beginning on the date payment was due, a penalty charge of six percent per annum on the amount of the initial payment.

22. Failure to Comply with Injunctive Relief Provisions: In addition to any other legal remedies available to the United States, if Settling Defendant fails to comply with any provision of Section III of this Consent Decree, Settling Defendant shall pay stipulated penalties, upon demand, for each day of each violation in the amount of three thousand seven hundred and fifty dollars (\$3,750.00) per day per violation for each violation.

23. Notification to EPA of Violation: Settling Defendant shall notify EPA Region 10, at the address set forth in paragraph 18 of the Consent Decree, of any violations of this Consent Decree within fifteen days of such violation.

24. Payment of Stipulated Penalties: Settling Defendant shall pay Stipulated Penalties, calculated in accordance with paragraph 22 of this Consent Decree, together with interest from the date such payment was due at the statutory judgment rate provided for in 28 U.S.C. § 1961, within fifteen days of the United States' demand for penalty in the same

manner as that specified in paragraph 18. In the event that a violation is alleged by the United States to have occurred and such violation has not been reported as provided in paragraph 23, the United States shall notify Settling Defendant in writing of the violation, the failure to notify EPA of such violation, and the Settling Defendant's obligation to pay stipulated penalties plus interest. Settling Defendant shall pay such stipulated penalties and interest within thirty days of the date of United States' mailing such notice and/or demand, unless Settling Defendant gives notice, within ten days of Settling Defendant's receipt of the United States' demand for stipulated penalties, that each violation is under dispute and therefore subject to the dispute resolution procedures of this Consent Decree. In the event Settling Defendant provides notice of such a dispute of the United States' demand, and either the parties or the Court (pursuant to paragraph 29 of this Consent Decree) determine that Settling Defendant shall comply with the disputed demand, Settling Defendant shall pay the amount demanded plus accrued interest in accordance with the statutory judgment rate provided for in 28 U.S.C. § 1961, from the date the demand would originally have become due if not for the Settling Defendant's dispute thereof.

25. Other Remedies Preserved: This Stipulated Penalty section is in addition to and in no way limits the United States' right to seek such additional relief for violations of the Consent Decree and/or applicable law as is available by law or in equity.

VI. DISPUTE RESOLUTION

26. Exclusivity: Unless otherwise expressly provided for in this Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

27. Applicability: The procedures set forth in this Section VI of this Consent Decree can not be invoked by Settling Defendant if it has not submitted a notice of dispute in accordance with paragraph 28.

28. Informal Negotiations: Any dispute which arises under or with respect to this Decree shall in the first instance be the subject of informal negotiations between the parties to the Dispute. The period for informal negotiations shall not exceed twenty calendar days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends all other parties a written Notice of Dispute.

29. Petition to Court: If the parties cannot resolve their dispute within twenty calendar days of the date the dispute arises, the United States' position shall control unless Settling Defendant files a petition with this Court for resolution of the dispute within ten days of receipt in writing of the United States' final position. The petition shall set out the nature of the dispute and the relief requested and shall specifically refer to this paragraph of the Decree. The United States shall have ten days to file a response to any such petition. Settling Defendant shall bear the burden of proof in any dispute resolution proceeding under this Consent Decree.

30. Effect on Deadlines: The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Settling Defendant under this Consent Decree not directly in dispute, unless EPA agrees or the Court orders otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment to the United States shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section V of this Consent Decree.

VII. INSPECTION AND ENTRY

31. Any authorized representative of EPA (including a designated contractor) may, upon presentation of credentials to the supervisor on site, without prior notice, enter upon the site of any work activity in which Settling Defendant participates to determine Settling Defendant's compliance with the requirements of the Clean Air Act, the asbestos NESHAP, and the provisions of this Consent Decree. Such inspection and entry may include the taking of samples and photographs and the inspection and copying of such records as EPA may deem necessary to determine Settling Defendant's compliance with the requirements of the Clean Air Act, the asbestos NESHAP, and the provisions of this Consent Decree. This paragraph is in addition to and not in limitation of EPA's authority to investigate, inspect, or enter premises pursuant to any laws, permits, or regulations.

VIII. CERTIFICATION

32. Any notice, report, certification, data presentation, or other document submitted by Settling Defendant under or pursuant to this Consent Decree that discusses, describes, demonstrates, or supports any finding, or makes any representation concerning Settling Defendant's compliance or non-compliance with any requirement(s) of this Consent Decree shall be certified by a responsible official of Settling Defendant. The term responsible official shall mean a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation.

33. The certification of the responsible official shall be in the following form:

"I certify that the information contained in or accompanying this (type of submission) is true, accurate, and complete."

(Signature)
(Title)

PUBLIC NOTICE

29. This Decree shall be lodged with the Court for a period of not less than thirty days for public notice and comment in accordance with 28 C.F.R. § 50.7. The parties agree that final approval and entry of this Decree are subject to the public notice requirements of 28 C.F.R. § 50.7, and the United States may modify or withdraw its consent to this Decree if comments received disclose facts or considerations which indicate that this Decree is inappropriate, improper, or inadequate.

Dated and entered this ____ day of _____, 2006.

United States District Judge

The undersigned agree to the foregoing Consent Decree and agree that, upon motion of the United States and after consideration of any public comment, the Consent Decree may be entered.

For Plaintiff United States of America:

ELLEN M. MAHAN
Deputy Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

7.23.07

Dated

SARAH D. HIMMELHOCH, Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

7-27-07
Dated

KARIN J. IMMERGUT
United States Attorney
District of Oregon

7/27/07
Dated

NEIL J. EVANS
Assistant United States Attorney
District of Oregon

7-27-07
Dated

EDWARD J. KOWALSKI
Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

7/25/07
Dated

For Defendant Birch Creek Construction, Inc.:

BRADLEY HUMBERT, PRESIDENT
BIRCH CREEK CONSTRUCTION, INC.

3 July 07
Dated

D. RAHN HOSTETTER
D. RAHN HOSTETTER, PC

July 9, 2007
Dated